95-1748

FILED
APR 24 1996
CLERK

No. 95-

In The

Supreme Court of the United States

October Term, 1995

JUST AARON,

Petitioner,

v.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA,

Respondent.

Petition for Writ of Certiorari
To The Supreme Court of California

PETITION FOR WRIT OF CERTIORARI

Just Aaron
2118 Wilshire Boulevard
Suite 335
Santa Monica, CA
90403-5784

Petitioner

34P

QUESTION PRESENTED FOR REVIEW

I exercise my right to privacy in the proceedings below, and I lose my telephone. That's the question.

No. 95-1514, presently before this Court, and Civil No. S049726 (Appendix A to this petition).

LIST OF ALL PARTIES

Petitioner Aaron is a nonpublished customer of GTE California Incorporated.

Respondent California Public Utilities Commission is an administrative agency created by the California Constitution, Article XII, Section I. It exercises the powers delegated to it in the California Public Utilities Code.

GTE California Incorporated is a public utility providing local exchange telephone service throughout much of Southern California. GTE California Incorporated was the defendant in the proceedings below and is the Real Party in Interest.

RELATED CASES PENDING BEFORE THE COURT

The People of the State of California and the Public Utilities Commission of the State of California v. Federal Communications Commission and United States of America, No. 95-1514.

TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW i

LIST OF ALL PARTIES ii

RELATED CASES PENDING BEFORE THE COURT iii

TABLE OF CONTENTS iv

INDEX OF APPENDICES iv

TABLE OF AUTHORITIES v

PETITION FOR WRIT OF CERTIORARI 1

OPINIONS BELOW 2

JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 3

STATEMENT OF THE CASE 4

REASONS FOR GRANTING THE PETITION 8

CONCLUSION 9

INDEX OF APPENDICES

A. Judgement of the California Supreme Court dated February 14, 1996 . . . . . A-1

B. Opinion Granting Defendant's Motion to Dismiss Complaint dated February 08, 1995 . . . . . A-2

C. Order Denying Rehearing of D.95-02-021 dated September 27, 1995 . . . . . A-14

TABLE OF AUTHORITIES

Constitutions

United States Constitution
Fourteenth Amendment 3,7

California State Constitution
Article I, Section 7 3,7
Article XII, Section 2 4,7

No. 95-

In The

Supreme Court of the United States

October Term, 1995

JUST AARON,

Petitioner,

v.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of California

PETITION FOR WRIT OF CERTIORARI

Petitioner Aaron ("Aaron") respectfully petitions that a writ of certiorari issue to review the judgement of the California Supreme Court in this case.

OPINIONS BELOW

The opinion of the California Supreme Court appears in the Appendix at page A-1[1], and is unreported. The challenged orders of the California Public Utilities Commission ("Commission" or "CPUC") appear in the Appendix at pages A-2 through A-13 (February 08, 1995), and pages A-14 through A-19 (September 27, 1995), respectively, and are available electronically on the LEXIS system.

JURISDICTION

The judgement of the California Supreme Court was entered on February 14, 1996. This Court has jurisdiction under 28 U.S.C. § 1257(a) because this appeal involves the denial of a privilege derived from federal law.

[1]As used herein, numbers preceded by the letter "A" refer to pages in the appendix to this petition.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides:

> Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article I, Section 7 of the California State Constitution provides:

> (a) A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws.
>
> (b) A citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens. Privileges or immunities granted by the Legislature may be altered or revoked.

Article XII, Section 2 of the California State Constitution provides:

> Subject to statute and due process, the commission may establish its own procedures. Any commissioner as designated by the commission may hold a hearing or investigation or issue an order subject to commission approval.

STATEMENT OF THE CASE

> As to both the "right not to speak" and the "right to speak anonymously," no customer in California will be compelled to disclose his or her telephone number.[2]

Recently, unlisted and nonpublished telephone subscribers, like Aaron, have been advised that they may avoid "capture" of their unlisted and nonpublished billing information and records by interstate service providers[3] and

---

[2]10 FCC Rcd at 11733, ¶ 91.

[3]The Federal Communications Commission ("FCC") has required that Local Exchange Carriers ("LECs"), including GTE California Incorporated ("GTEC") "inform their unlisted and nonpublished customers that they have a right to request that their Billing Name and Address ("BNA") not be disclosed to interstate service providers." 8 FCC Rcd at 8810, ¶ 68. "We cannot agree that it is reasonable to assume that customers with unlisted and nonpublished numbers consent to disclosure and use of their BNA information." 8 FCC Rcd at 8810, ¶ 70. "Accordingly, we revise Section 64.1201(e) to allow disclosure of the BNA of any unlisted and nonpublished subscriber unless that subscriber affirmatively requests that its BNA not be disclosed." 8 FCC Rcd at 8810, ¶ 68.

to subscribers of a service known as Caller ID.[4]

Petitioner Aaron did just that.[5]

The next day, GTEC cancelled his GTE calling card, collect and third party call privileges, within the State of California, and within his own community.[6]

"Why," he wondered? Did they lose his number?[7]

The next day, Petitioner Aaron filed a formal complaint with the California Public Utilities Commission.[8]

---

[4]"California residents, consistent with California policy" may also block passage of the Calling Party's Name and Number ("CPN") by choosing either per call or per line blocking. All that is necessary, is that the customer make the decision to do so." 10 FCC Rcd at 11733, ¶ 91. "Failure to utilize either of those options effects a waiver of any conceivable right to prevent disclosure of CPN" (Brief For The Respondents In Opposition, page 10, Case No. 95-1514 In the Supreme Court of the United States).

[5]Petitioner Aaron made "the decision to do so" and block passage of both BNA and CPN.

[6]Including calls handled by GTEC.

[7]Petitioner Aaron has been a nonpublished customer of GTEC for over twelve years. "At his request, complainant's name, telephone number and address are unpublished in any telephone directory, and unavailable to parties other than GTEC." A-5. The current fee for nonpublished service is $1.50 per month, in addition to the monthly service rate.

[8]June 15, 1994.

On Wednesday,[9] the Commission notified General Telephone that, in fact:

> The FCC ruling did not require that the local exchange carrier deny such privileges to a customer for intrastate calling.[10]

Would they return Petitioner Aaron's calling card, collect and third party call privileges, handled by GTEC?[11]

> GTEC claims that in view of the FCC order, the Commission is without jurisdiction to consider the allegations of the complaint, and moved to dismiss the complaint for want of jurisdiction.[12]

---

[9]September 27, 1995, nearly sixteen months later.

[10]A-15. No notification was ever provided, with respect to "intrastate" calls in this proceeding. Under the Communications Act of 1934, the CPUC has authority over *intrastate* common carrier communications by wire or radio and the FCC has authority over *interstate* common carrier communications by wire or radio. *See* 47 U.S.C. §§ 152(a) and 152(b)(1). So far as relevant here, the newly enacted Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (Feb. 08, 1996), does not alter this division of authority.

[11]The relief sought. A-16.

[12]A-11, no. 8. GTEC explained to the Commission that ". . .the FCC is not allowing the LECs, which also control process by which their customers authorize BNA disclosure, to provide calling card, third party and collect services on calls which they solely control using BNA that the customer has refused to disclose to interstate carriers" (Answer to Complaint, page 5, Case No. C.94-06-023 Before the Public Utilities Commission of the State of California).

> While we do not agree with GTEC that this Commission has no jurisdiction to consider the issues raised in the complaint because of federal preemption, we decline to exercise our jurisdiction for the purpose of challenging the FCC's order insofar as it relates to the complainant.[13]

In his complaint, Petitioner argued "discrimination."[14]

On rehearing, "due process."[15]

---

[13]A-8 through A-9.

[14]"Mr. Aaron's equal protection argument is based on the contention that he is being treated differently than his fellow GTE customers, because to maintain his privacy, he is denied the privilege of using a GTE calling card or the ability to receive third party or collect calls within GTEC's territory. As a result, he alleges that the Commission has unlawfully discriminated against him in violation of the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution and article 1, section 7 of the California Constitution" (Answer Of Respondent To Petition For Writ Of Review, page 9, Case No. S049726 In the Supreme Court of the State of California).

[15]"Petitioner alleges that the Commission's D.95-02-021 violates his right to due process protections under article 12, section 2 of the California Constitution, because in that decision and in D.95-09-120, the Commission failed to craft a California-specific solution of the perceived problem created by the FCC order In the Matter of Policies and Rules Concerning Local Exchange Validation and Billing Information for Joint Use Calling Cards, *supra*, and instead, allowed that Order to control" (Answer Of Respondent To Petition For Writ of Review, page 7, Case No. S049726 In the Supreme Court of the State of California).

Mr. Aaron has not, however, argued a "violation" of his right to privacy."[16]

On Monday,[17] Petitioner Aaron filed a petition for writ of review with the California Supreme Court.

On Wednesday,[18] the California Supreme Court entered its judgement denying Aaron's petition for writ of review.

REASONS FOR GRANTING THE PETITION

GTEC already has Aaron's number.[19] No Commission can argue otherwise.

---

[16]". . .we revise Section 64.1201(e) to allow disclosure of the BNA of any unlisted and nonpublished subscriber unless that subscriber affirmatively requests that its BNA not be disclosed." 8 FCC Rcd at 3810, ¶ 68. "All that is necessary, is that the customer make the decision to do so." 10 FCC Rcd at 11733, ¶ 91.

[17]October 30, 1995.

[18]February 14, 1996.

[19]A request was made that they withhold it from others.

CONCLUSION

Petitioner Aaron respectfully requests that the Court issue a writ of certiorari to review the judgement of the California Supreme Court in this case.

Just Aaron
2118 Wilshire Boulevard
Suite 335
Santa Monica, CA
90403-5784

Petitioner

April 23, 1996

APPENDIX A

IN THE SUPREME COURT OF CALIFORNIA

JUST AARON, Petitioner, v. PUBLIC UTILITIES COMMISSION, Respondent.	)	S049726

Petition for writ of review DENIED.

Dated February 14, 1996, at San Francisco, California.

/s/ Malcolm S. Lucas
Chief Justice

APPENDIX B

Decision 95-02-021 February 8, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JUST AARON,	)	
	)	
Complainant,	)	Case 94-06-023
	)	(Filed June 15,1994)
v.	)	
	)	
GTE CALIFORNIA Incorporated,	)	
	)	
Defendant.	)	
	)	

OPINION GRANTING DEFENDANT'S MOTION TO DISMISS COMPLAINT

Background

On June 15, 1994, **Just Aaron** (complainant), a customer of **GTE California Incorporated** (GTEC), filed the complaint herein against GTEC seeking an order of the Commission preventing GTEC from disclosing, pursuant to Federal Communications Commission (FCC) order, complainant's billing name and address (BNA) to interstate telecommunications common carriers. On July 15, 1994, GTEC filed an answer challenging the Commission's

jurisdiction over this dispute, and further asserting that the complaint is substantively without merit. Also on that date, GTEC filed a motion to dismiss the complaint for want of Commission jurisdiction. On August 3, 1994, complainant filed a response to GTEC's motion to dismiss. Thereafter, on August 15, 1994, complainant filed a motion for leave to file a supplement to his response. On August 23, 1994, GTEC filed an objection to Aaron's motion for leave. We grant Aaron's motion for leave to file a supplement to his response to GTEC's motion to dismiss and accept the response.

On November 28, 1994, complainant "faxed" to the presiding Administrative Law Judge (ALJ) copies of correspondence between complainant, GTEC and the Commission's Public Advisor criticizing the quality of the reproduced FCC Order giving rise to this controversy, which copy was attached as Exhibit A to GTEC's answer. On December 6, 1994, complainant faxed to ALJ John Wong, advisor to the Commission's Docket Office, and to the presiding ALJ, a "Motion to Spank GTE California Incorporated" in which he objected to the poor quality of the reproduction of exhibits furnished by GTEC. We know of no

legal proceeding to "spank" a party for offering as exhibits documents which are illegible, however, we will consider complainant's motion as a motion for the imposition of sanctions. It should be noted for the record that upon receipt of GTEC's answer, the presiding ALJ contacted counsel for GTEC and discussed the extremely poor quality of the exhibit and advised that exhibits of such quality were unacceptable and suggested closer attention to such details in the future.[1] The ALJ advised counsel that since the ALJ had access to FCC reports, he would place a legible copy of the exhibit in the case file, and that it would not be necessary for counsel to forward a replacement exhibit. We believe the ALJ's admonition has served its intended purpose, and deny complainant's request for sanctions.

We do not reach the merits of the allegations of the complaint, as we grant GTEC's motion to dismiss the complaint.

---

[1]Rule 2 of the Commission's Rules of Practice and Procedure, which governs the "Form and Size," of all pleadings and briefs filed with the Commission, specifies that "Reproductions may be by any process, provided all copies are clear and permanently legible."

Discussion

For some time prior to June 9, 1993, complainant was and currently is, a subscriber to telephone service provided by GTEC, which, insofar as this proceeding is concerned, is considered a Local Exchange Carrier (LEC). At his request, complainant's name, telephone number and address are unpublished in any telephone directory, and unavailable to parties other than GTEC.

On June 9, 1993, in In the Matter of Policies and Rules Concerning Local Exchange Validation and Billing Information for Joint Use Calling Cards, CC Docket No. 91-115, 8 FCC Rcd. 4478, the FCC issued an order requiring LEC's to provide to interstate common carriers non-discriminatory access to the BNA of LEC subscribers who use a LEC calling card or authorize collect[2] and third-party calls[3]

---

[2]A collect call is one for which the calling party requests the interexchange carrier (IXC) to bill the call to the called party's line number. In these cases, only the LEC serving the called party has access to the BNA information necessary to bill for the call. (Source: 8 FCC Record 4478, fn 1.)

[3]A third-party call is one for which the calling party requests the IXC to bill the call to the line number of a third party. As with collect calls, only the LEC serving the third party has access to the BNA information necessary to bill for the call in these cases. (Source: Id., fn

to pay for a carrier's services. According to the FCC order, access to BNA will enable interstate service providers[4] to seek payment for their services directly from the LEC customer. In its conclusion, the FCC stated:

> "In order to balance the privacy concerns of end users with telecommunications providers' need to obtain payment for their services, we require that LEC's [Local Exchange Carriers] disclose BNA to IXC's [Interexchange Carriers] and enhanced and information service providers and their authorized agents for the limited purpose of billing end users for telecommunication services charged to their LEC calling cards. In addition, we mandate a one-time notification requirement to all end users that BNA for their LEC card will be disclosed for billing purposes and we require the LEC to secure authorization for BNA disclosure from those end users with unlisted or unpublished numbers." (8 FCC Rcd. 4487.)

There appears to be no dispute that GTEC provided the required notification to complainant, and advised him that denial of such authorization would result in the cancellation of his GTEC calling card and that he would be unable to accept collect calls or allow calls to be billed to his number. Complainant has refused on privacy grounds to allow GTEC

---

[4]For purposes of the FCC Order, "interstate service provider" includes IXCs, operator service providers (OSPs), enhanced service providers (ESPs), and any other provider of telecommunications services. (Source: Id., fn 3.)

to release his BNA to IXC's for billing purposes, but desires to retain his GTEC calling card as well as his collect call and third party billing to his number privileges when such calls are solely "handled by General Telephone within the GTE exchange." (Complaint, p. 2.) In its answer, GTEC asserts that the database technology currently in use cannot distinguish and process calling card, third party and collect calls that are originated, processed and terminated solely by GTEC, while blocking all other calls of these types. For purposes of this motion, we accept that statement as true.

In a letter to complainant dated March 24, 1994, (Exhibit C to GTEC's answer), the Commission's Consumer Affairs Branch advised complainant that the Commission does not have jurisdiction to grant the relief sought by complainant. Technically, that is not our position.

Federal Preemption

The FCC carefully analyzed the issue of a subscriber's expectation of privacy and, after reviewing state laws, including California, addressing BNA disclosure, concluded that such a right of privacy would not suffer appreciably if the subscriber's BNA was disclosed only to the interstate carrier

providing the requested service. Further, in its order (8 FCC Recd 4478 at 4487, para. 41), the FCC noted that there was no basis on the record before it to conclude that the requirement it adopted will conflict with any existing state law, and that there was no need at this time to preempt state privacy regulations.

Conclusion

Insofar as the rights of IXCs and other interstate carriers are affected by the FCC's ruling, we agree that we have no jurisdiction over such a carrier or the FCC's authority to direct the activities of such a carrier. However, insofar as jurisdiction over intrastate carriers is concerned, this Commission has jurisdiction. Thus, both the FCC and this Commission have, and may exercise jurisdiction over, different parties to this conflict and different aspects of their relationships and activities. That is not to say, however, that we are compelled or desire to exercise the jurisdiction we possess.

While we do not agree with GTEC that this Commission has no jurisdiction to consider the issues raised in the complaint because of federal preemption, we decline to

exercise out jurisdiction for the purpose of challenging the FCC's order insofar as it relates to the complainant.

We find the FCC's conclusion and requirement that LECs provide the subscriber's BNA to interstate service providers to enable such interstate service providers to seek payment for their services directly from the LEC customer not unreasonable, and not an unreasonable intrusion into the privacy of an LEC customer who desires to use a LEC calling card or authorize collect or third party calls to pay for a carrier's services. If complainant desires that his BNA not be provided under the limited circumstances directed by the FCC order, he may refuse to grant such authorization to GTEC. Should he take that position, however, GTEC is, under the FCC order, free to rescind his calling card, collect, and third-party calling privileges. The choice of which course of action GTEC will follow rests with the complainant, and we refuse to intervene.

Because of its effect upon the public, the order of the Commission should be effective on the date signed.

Findings of Fact

1. In June 1993, the Federal Communications Commission (FCC) issued an order requiring Local Exchange Carriers (LECs) to provide to interstate telecommunications common carriers nondiscriminatory access to the billing name and address (BNA) of LEC subscribers who use a LEC calling card or authorize collect and third-party calls to pay for a carrier's services.

2. Complainant is a subscriber of GTEC (a LEC) services and has calling card, collect and third-party privileges.

3. Complainant's telephone number and address are not published in any telephone listing.

4. Pursuant to the FCC order, GTEC advised complainant of the need to release his BNA to appropriate interstate carriers for billing purposes when his calling card, collect and third-party privileges are exercised, and further advised him that a refusal to authorize release of his BNA for such purpose would result in the loss of those privileges.

5. Complainant refused, on privacy grounds, to authorize release of his BNA, but desires to keep the calling

card, collect and third-party authorization when such calls are solely handled by GTEC within the GTE exchange.

6. GTEC alleges that it is not technically possible at this time to distinguish and process calling card, collect and third-party calls that are originated, processed and terminated solely by GTEC, while blocking all other calls of these types; for purposes of this motion, we accept GTEC's allegation as true.

7. By this proceeding, complainant seeks an order of the Commission preventing GTEC from releasing his BNA as described.

8. GTEC claims that in view of the FCC order, the Commission is without jurisdiction to consider the allegations of the complaint, and moved to dismiss the complaint for want of jurisdiction.

9. The FCC order involved specifically provides that it does not preempt state privacy laws.

Conclusions of Law

1. Insofar as the rights of interstate carriers are affected by the FCC order, the FCC had jurisdiction.

2. Insofar as the rights of intrastate carriers are

concerned, the Commission has jurisdiction.

3. The database technology currently in use cannot distinguish and process calling card, collect, and third-party calls that are originated, processed and terminated solely by GTEC, while blocking all other calls of these types.

4. State privacy laws, including California's, were considered by the FCC in its order here involved.

5. The FCC has not preempted state privacy laws in connection with the release of BNA's of LEC customers to interstate carriers which provide services directly to the LEC customers.

6. The FCC order is not unreasonable and not an unreasonable intrusion into the privacy of a LEC customer who desires to use a calling card, or authorize collect or third-party calls to pay for an interstate telecommunications common carrier's services.

7. This Commission should not exercise its jurisdiction to interfere with the FCC order involved in this dispute.

8. If complainant desires that his BNA not be disclosed in accordance with the terms of the FCC order, he

may refuse to grant such authorization to GTEC. Should he take that course of action, however, GTEC is, under the FCC order, free to rescind complainant's calling card, collect, and third-party privileges.

9. Any further action regarding the FCC order should be pursued before the FCC.

10. The complaint should be dismissed.

11. The Commission's order should be effective immediately.

ORDER

IT IS ORDERED that:

1. The complaint is dismissed.

2. Any further proceeding in regard to the Federal Communications Commission (FCC) order must be pursued before the FCC.

This order is effective today.

Dated February 8, 1995, at San Francisco, California.

DANIEL Wm. FESSLER
President
NORMAN D. SHUMWAY
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
Commissioners

APPENDIX C

Decision 95-09-120 September 27, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JUST AARON,	)	
	)	
Complainant,	)	C. 94-06-023
	)	
v.	)	
	)	
GTE CALIFORNIA Incorporated,	)	
	)	
Defendant.	)	
	)	

ORDER DENYING REHEARING OF D. 95-02-021

On June 9, 1993, in In the Matter of Policies and Rules Concerning Local Exchange Validation and Billing Information for Joint Use Calling Cards, CC Docket No. 91-115, 8 FCC Rcd. 4478, the Federal Communications Commission (FCC) issued an order requiring local exchange carriers (LEC's) to provide to interstate common carriers non-discriminatory access to the billing name, address and telephone number (BNA) of LEC subscribers who use a LEC

calling card or authorize collect[1] and third-party calls[2] to pay for a carrier's services. The FCC also found that if a customer did not want her/his BNA given to interstate common carriers that the LEC could deny that customer the privilege of using a LEC calling card or the ability to receive third party or collect calls. The FCC ruling did not require that the LEC deny such privileges to a customer for intrastate calling.[3]

GTEC notified Mr. Aaron (complainant), a customer of GTE California Incorporated (GTEC), of the FCC ruling and advised him that if he refused to allow GTEC to share his BNA information with interstate telecommunications carriers

---

[1]A collect call is one for which the calling party requests the interexchange carrier to bill the call to the called party's line number. In these cases, only the LEC serving the called party has access to the BNA information necessary to bill for the call. (Source: 8 FCC Record 4478, fn 1.)

[2]A third-party call is one for which the calling party requests the interexchange carrier to bill the call to the line number of a third party. As with collect calls, only the LEC serving the third party has access to the BNA information necessary to bill for the call in these cases. (Source: Id., fn 2.)

[3]See Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, CC Docket No. 91-115, Second Order for Reconsideration, 8 FCC Rcd 8798, 8810 (1993).

for billing purposes, his GTEC calling card would be cancelled and he would be unable to accept collect calls or allow calls to be billed to his number. Complainant refused on privacy grounds to allow GTEC to release his BNA to the interexchange carriers. However, complainant wanted to retain his GTEC calling card as well as his collect call and third party billing to his number privileges when such calls are solely "handled by General Telephone within the GTE exchange." (Complaint, p. 2) GTEC refused his request.

On June 15, 1994, complainant, filed a complaint against GTEC requesting that we prevent GTEC from denying him access to collect calls and third party calls from within GTEC's area because of complainant's refusal to disclose, pursuant to FCC order, complainant's BNA to interstate telecommunications carriers for billing purposes. On July 15, 1994, GTEC filed an answer challenging our jurisdiction over this dispute, and further asserting that the complaint is substantively without merit. GTEC also filed a Motion to Dismiss the complaint before us for want of jurisdiction. Thereafter, responses were filed by both sides.

On February 8, 1995 we issued D. 95-02-021 which

found that we had jurisdiction over the intrastate portion of this dispute. However, we decided not to craft a California specific solution to the dispute because the FCC requirement was reasonable and GTEC's database technology currently in use could not distinguish and process calling card, third party and collect calls that are originated, processed and terminated solely by GTEC, while blocking all other calls of these types. Thus, we found that complainant was subject to the requirements of the FCC rule for intrastate purposes.

On March 15, 1995, Mr. Aaron filed an Application for Rehearing of D. 95-02-021. Complainant alleges that we have jurisdiction over the complaint, and that we denied complainant his right to due process under article 12, section 2 of the California State Constitution because we declined to exercise such jurisdiction.

In D. 95-02-021 we found that we had jurisdiction over the intrastate portion of this dispute. We then reviewed the facts of the case. First, we found that the FCC's rule did not violate California law and proposed a reasonable solution to the problem raised. Second, we found that GTEC did not at that time have a way to technically separate the intrastate

and interstate traffic to make it possible to craft a California specific solution. Based on these findings, we found that the FCC's requirements regarding calling cards, collect and third party calls were adequate and could be used for the intrastate portion of the traffic. Further, implicit in our decision is the implication that circumstances could change, and that we might in the future review this issue and take a more proactive position.

In making these findings we did exercise jurisdiction over this dispute and found in favor of the defendant. Since we did exercise jurisdiction in this matter, Mr. Aaron had his day in court and his due process rights were not violated. Mr. Aaron has failed to raise any legal error, therefore his Application for Rehearing should be denied.

We have reviewed all the other allegations of the Application for Rehearing and believe that no other grounds for rehearing are set forth. Having fully considered the issues raised, Mr. Aaron's Application for Rehearing is denied.

WHEREFORE, IT IS ORDERED that Mr. Aaron's Application for Rehearing of D.95-02-021 is denied. This order is effective today.

Dated September 27, 1995, at San Francisco, California.

DANIEL Wm. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
Commissioners